

SENATE BILL No. 4

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-8; IC 35-41-1-5.5; IC 35-50-6.

Synopsis: Reduction of credit time for sex offenders. Creates department of correction credit Class IV for felons convicted of certain serious child molesting offenses and certain murders involving sex offenses. Specifies that persons in credit Class IV earn one day of credit for each six days of incarceration. Provides that persons in credit Class IV may be placed in a credit class where they earn no credit, but may not be placed in a credit class where they earn more credit. Specifies that registration as a sex offender is not required for: (1) a parent or guardian who is convicted of kidnapping or confining a child of the parent or a child over whom the guardian has guardianship; or (2) a person convicted of sexual misconduct with a minor as a Class C felony if the person is not more than four years older than the victim and the court finds that the person should not be required to register. Establishes a three tier system for sex offenders and requires offenders: (1) in Tier 3 to register for life; (2) in Tier 2 to register for 25 years; and (3) in Tier 1 to register for 15 years. Permits Tier 1 offenders to reduce their registration period by five years if they meet certain requirements. Requires sex offenders to register the license plate number and description of any vehicle owned by the sex offender. Requires a sex or violent offender to register not more than 72 hours after certain events. Requires local law enforcement to make a photograph of a sex offender every time the offender registers in person. Requires local law enforcement to notify every school and public housing agency in each county a sex offender registers when the offender registers or updates a registration.

Effective: July 1, 2008.

Drozda

January 8, 2008, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 4

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-8-1-11 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]: **Sec. 11. "Tier 1 sex offender" means a sex offender who**
4 **is not a Tier 2 or Tier 3 sex offender.**

5 SECTION 2. IC 11-8-1-12 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2008]: **Sec. 12. "Tier 2 sex offender" means:**

8 **(1) a person who has been convicted of one (1) or more of the**
9 **following offenses:**

10 **(A) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)),**
11 **if the victim is less than eighteen (18) years of age.**

12 **(B) Sexual trafficking of a minor (IC 35-42-3.5-1(b)).**

13 **(C) Human trafficking (IC 35-42-3.5-1(c)(3)), if the victim**
14 **is less than eighteen (18) years of age.**

15 **(D) Promoting prostitution (IC 35-45-4-4), if the victim is**
16 **less than eighteen (18) years of age.**

17 **(E) Sexual battery (IC 35-42-4-8), if the victim is at least**

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thirteen (13) years of age but less than eighteen (18) years of age.

(F) Vicarious sexual gratification involving:

(i) the use of force or a controlled substance (IC 35-42-4-5(a)(2)); or

(ii) serious bodily injury (IC 35-42-4-5(a)(3));

if the victim is at least thirteen (13) years of age.

(G) Child exploitation (IC 35-42-4-4(b)).

(H) Child seduction (IC 35-42-4-7).

(I) An attempt or a conspiracy to commit an offense described in clauses (A) through (H); or

(2) a person who, being a Tier 1 sex offender, is convicted of a subsequent sex offense.

The term does not include a person who is a Tier 3 sex offender.

SECTION 3. IC 11-8-1-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. "Tier 3 sex offender" means the following:

(1) A person convicted of one (1) of the following offenses:

(A) Rape (IC 35-42-4-1).

(B) Criminal deviate conduct (IC 35-42-4-2).

(C) Child molesting (IC 35-42-4-3).

(D) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age, and the person who kidnapped the victim is not the victim's parent or guardian.

(E) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age and the person who confined or removed the victim is not the victim's parent or guardian.

(F) Sexual battery (IC 35-42-4-8), if the victim is less than thirteen (13) years of age.

(G) Vicarious sexual gratification involving:

(i) the use of force or a controlled substance (IC 35-42-4-5(a)(2)); or

(ii) serious bodily injury (IC 35-42-4-5(a)(3));

if the victim is less than thirteen (13) years of age.

(H) An attempt or a conspiracy to commit an offense described in clauses (A) through (G).

(2) A child who is adjudicated as a delinquent child for an act that, if committed by an adult, would constitute:

(A) rape (IC 35-42-4-1);

(B) criminal deviate conduct (IC 35-42-4-2); or

(C) child molesting involving sexual intercourse

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(IC 35-42-4-3(a));

if the child was at least fourteen (14) years of age at the time the offense was committed.

(3) A person who, being a Tier 2 sex offender, is convicted of a subsequent sex offense.

SECTION 4. IC 11-8-8-5, AS AMENDED BY P.L.216-2007, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) Except as provided in section 22 of this chapter, as used in this chapter, "sex or violent offender" means a person convicted of any of the following offenses:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4(b)).
- (5) Vicarious sexual gratification (including performing sexual conduct in the presence of a minor) (IC 35-42-4-5).
- (6) Child solicitation (IC 35-42-4-6).
- (7) Child seduction (IC 35-42-4-7).
- (8) Sexual misconduct with a minor as a Class A, Class B, or Class C felony (IC 35-42-4-9), unless:
 - (A) the person is convicted of sexual misconduct with a minor as a Class C felony;
 - (B) the person is not more than:
 - (i) four (4) years older than the victim if the offense was committed after June 30, 2007; or
 - (ii) five (5) years older than the victim if the offense was committed before July 1, 2007; and
 - (C) the sentencing court finds that the person should not be required to register as a sex offender.
- (9) Incest (IC 35-46-1-3).
- (10) Sexual battery (IC 35-42-4-8).
- (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age, and the person who kidnapped the victim is not the victim's parent or guardian.
- (12) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age, and the person who confined or removed the victim is not the victim's parent or guardian.
- (13) Possession of child pornography (IC 35-42-4-4(c)).
- (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony.
- (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the victim is less than eighteen (18) years of age.
- (16) Sexual trafficking of a minor (IC 35-42-3.5-1(b)).

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(17) Human trafficking (IC 35-42-3.5-1(c)(3)) if the victim is less than eighteen (18) years of age.

(18) Murder (IC 35-42-1-1).

(19) Voluntary manslaughter (IC 35-42-1-3).

(20) An attempt or conspiracy to commit a crime listed in subdivisions (1) through (19).

(21) A crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in subdivisions (1) through (20).

(b) The term includes:

(1) a person who is required to register as a sex or violent offender in any jurisdiction; and

(2) a child who has committed a delinquent act and who:

(A) is at least fourteen (14) years of age;

(B) is on probation, is on parole, is discharged from a facility by the department of correction, is discharged from a secure private facility (as defined in IC 31-9-2-115), or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be an offense described in subsection (a) if committed by an adult; and

(C) **unless the delinquent act committed by the child would, if committed by an adult, be:**

(i) rape (IC 35-42-4-1);

(ii) criminal deviate conduct (IC 35-42-4-2); or

(iii) child molesting involving sexual intercourse (IC 35-42-4-3(a));

is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

(c) In making a determination under subsection (b)(2)(C), the court shall consider expert testimony concerning whether a child is likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

SECTION 5. IC 11-8-8-7, AS AMENDED BY P.L.216-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) Subject to section 19 of this chapter, the following persons must register under this chapter:

(1) A sex or violent offender who resides in Indiana. A sex or violent offender resides in Indiana if either of the following applies:

(A) The sex or violent offender spends or intends to spend at least seven (7) days (including part of a day) in Indiana during

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a one hundred eighty (180) day period.

(B) The sex or violent offender owns real property in Indiana and returns to Indiana at any time.

(2) A sex or violent offender who works or carries on a vocation or intends to work or carry on a vocation full-time or part-time for a period:

(A) exceeding seven (7) consecutive days; or

(B) for a total period exceeding fourteen (14) days;

during any calendar year in Indiana regardless of whether the sex or violent offender is financially compensated, volunteered, or is acting for the purpose of government or educational benefit.

(3) A sex or violent offender who is enrolled or intends to be enrolled on a full-time or part-time basis in any public or private educational institution, including any secondary school, trade, or professional institution, or postsecondary educational institution.

(b) Except as provided in subsection (e), a sex or violent offender who resides in Indiana shall register with the local law enforcement authority in the county where the sex or violent offender resides. If a sex or violent offender resides in more than one (1) county, the sex or violent offender shall register with the local law enforcement authority in each county in which the sex or violent offender resides. If the sex or violent offender is also required to register under subsection (a)(2) or (a)(3), the sex or violent offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (c) or (d).

(c) A sex or violent offender described in subsection (a)(2) shall register with the local law enforcement authority in the county where the sex or violent offender is or intends to be employed or carry on a vocation. If a sex or violent offender is or intends to be employed or carry on a vocation in more than one (1) county, the sex or violent offender shall register with the local law enforcement authority in each county. If the sex or violent offender is also required to register under subsection (a)(1) or (a)(3), the sex or violent offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (b) or (d).

(d) A sex or violent offender described in subsection (a)(3) shall register with the local law enforcement authority in the county where the sex or violent offender is enrolled or intends to be enrolled as a student. If the sex or violent offender is also required to register under subsection (a)(1) or (a)(2), the sex or violent offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (b) or (c).

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(e) A sex or violent offender described in subsection (a)(1)(B) shall register with the local law enforcement authority in the county in which the real property is located. If the sex or violent offender is also required to register under subsection (a)(1)(A), (a)(2), or (a)(3), the sex or violent offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (b), (c), or (d).

(f) A sex or violent offender committed to the department shall register with the department before the sex or violent offender is released from incarceration. The department shall forward the sex or violent offender's registration information to the local law enforcement authority of every county in which the sex or violent offender is required to register.

(g) ~~This subsection does not apply to a sex or violent offender who is a sexually violent predator.~~ A sex or violent offender not committed to the department shall register not more than ~~seven (7) days~~ **seventy-two (72) hours** after the sex or violent offender:

- (1) is released from a penal facility (as defined in IC 35-41-1-21);
- (2) is released from a secure private facility (as defined in IC 31-9-2-115);
- (3) is released from a juvenile detention facility;
- (4) is transferred to a community transition program;
- (5) is placed on parole;
- (6) is placed on probation;
- (7) is placed on home detention; or
- (8) arrives at the place where the sex or violent offender is required to register under subsection (b), (c), or (d);

whichever occurs first. A sex or violent offender required to register in more than one (1) county under subsection (b), (c), (d), or (e) shall register in each appropriate county not more than seventy-two (72) hours after the sex or violent offender's arrival in that county or acquisition of real estate in that county.

~~(h) This subsection applies to a sex or violent offender who is a sexually violent predator. A sex or violent offender who is a sexually violent predator shall register not more than seventy-two (72) hours after the sex or violent offender:~~

- ~~(1) is released from a penal facility (as defined in IC 35-41-1-21);~~
- ~~(2) is released from a secure private facility (as defined in IC 31-9-2-115);~~
- ~~(3) is released from a juvenile detention facility;~~
- ~~(4) is transferred to a community transition program;~~
- ~~(5) is placed on parole;~~

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(6) is placed on probation;

(7) is placed on home detention; or

(8) arrives at the place where the sexually violent predator is required to register under subsection (b); (c); or (d);

whichever occurs first. A sex or violent offender who is a sexually violent predator required to register in more than one (1) county under subsection (b); (c); (d); or (e) shall register in each appropriate county not more than seventy-two (72) hours after the offender's arrival in that county or acquisition of real estate in that county.

(i) (h) The local law enforcement authority with whom a sex or violent offender registers under this section shall make and publish a photograph of the sex or violent offender on the Indiana sex and violent offender registry web site established under IC 36-2-13-5.5. The local law enforcement authority shall make a photograph of the sex or violent offender that complies with the requirements of IC 36-2-13-5.5 **at least once per year. every time the sex offender registers in person.** The sheriff of a county containing a consolidated city shall provide the police chief of the consolidated city with all photographic and computer equipment necessary to enable the police chief of the consolidated city to transmit sex or violent offender photographs (and other identifying information required by IC 36-2-13-5.5) to the Indiana sex and violent offender registry web site established under IC 36-2-13-5.5. In addition, the sheriff of a county containing a consolidated city shall provide all funding for the county's financial obligation for the establishment and maintenance of the Indiana sex and violent offender registry web site established under IC 36-2-13-5.5.

(j) (i) When a sex or violent offender registers **or updates a registration**, the local law enforcement authority shall:

(1) immediately update the Indiana sex and violent offender registry web site established under IC 36-2-13-5.5;

(2) notify every law enforcement agency having jurisdiction in the county where the sex or violent offender resides; **and**

(3) update the National Crime Information Center National Sex Offender Registry data base via the Indiana data and communications system (IDACS); **and**

(4) **notify every school and public housing agency in each county where the sex offender is required to register.**

When a sex or violent offender from a jurisdiction outside Indiana registers a change of address, employment, vocation, or enrollment in Indiana, The local law enforcement authority shall provide the department, **a law enforcement agency described in subdivision (2), and a school and public housing agency described in subdivision**

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(4), with the information provided by the sex or violent offender, **including a sex or violent offender from a jurisdiction outside Indiana, who registers a change of address, employment, vocation, or enrollment in Indiana**, during registration.

SECTION 6. IC 11-8-8-8, AS AMENDED BY P.L.216-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. The registration required under this chapter must include the following information:

(1) The sex or violent offender's full name, alias, any name by which the sex or violent offender was previously known, date of birth, sex, race, height, weight, hair color, eye color, any scars, marks or tattoos, Social Security number, driver's license number or state identification card number, vehicle description and vehicle plate number for any vehicle the sex or violent offender owns or operates on a regular basis, principal residence address, other address where the sex or violent offender spends more than seven (7) nights in a fourteen (14) day period, and mailing address, if different from the sex or violent offender's principal residence address.

(2) A description of the offense for which the sex or violent offender was convicted, the date of conviction, the county of the conviction, the cause number of the conviction, and the sentence imposed, if applicable.

(3) If the person is required to register under section 7(a)(2) or 7(a)(3) of this chapter, the name and address of each of the sex or violent offender's employers in Indiana, the name and address of each campus or location where the sex or violent offender is enrolled in school in Indiana, and the address where the sex or violent offender stays or intends to stay while in Indiana.

(4) A recent photograph of the sex or violent offender.

(5) If the sex or violent offender is a sexually violent predator, that the sex or violent offender is a sexually violent predator.

(6) If the sex or violent offender is required to register for life, that the sex or violent offender is required to register for life.

(7) The license plate number and description of any vehicle owned or operated by the sex offender.

(8) The sex or violent offender's e-mail addresses for work and home.

~~(7)~~ (9) Any other information required by the department.

SECTION 7. IC 11-8-8-14, AS AMENDED BY P.L.216-2007, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 14. (a) This subsection does not apply to a sex or

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1 violent offender who is a sexually violent predator. In addition to the
 2 other requirements of this chapter, a sex or violent offender who is
 3 required to register under this chapter shall: ~~at least one (1) time per~~
 4 ~~calendar year:~~

5 (1) report in person to the local law enforcement authority;

6 (2) register; and

7 (3) be photographed by the local law enforcement authority;

8 in each location where the offender is required to register **as often as**
 9 **required under subsection (d).**

10 (b) This subsection applies to a sex or violent offender who is a
 11 sexually violent predator. In addition to the other requirements of this
 12 chapter, a sex or violent offender who is a sexually violent predator
 13 under IC 35-38-1-7.5 shall:

14 (1) report in person to the local law enforcement authority;

15 (2) register; and

16 (3) be photographed by the local law enforcement authority in
 17 each location where the sex or violent offender is required to
 18 register;

19 every ninety (90) days.

20 (c) Each time a sex or violent offender who claims to be working or
 21 attending school registers in person, the sex or violent offender shall
 22 provide documentation to the local law enforcement authority
 23 providing evidence that the sex or violent offender is still working or
 24 attending school at the registered location.

25 **(d) A sex offender shall report, register, and be photographed**
 26 **as required under subsection (a) as follows:**

27 (1) **A Tier 1 sex offender shall report, register, and be**
 28 **photographed at least one (1) time per year.**

29 (2) **A Tier 2 sex offender shall report, register, and be**
 30 **photographed at least one (1) time every one hundred eighty**
 31 **(180) days.**

32 (3) **A Tier 3 sex offender shall report, register, and be**
 33 **photographed at least one (1) time every ninety (90) days.**

34 SECTION 8. IC 11-8-8-19, AS AMENDED BY P.L.216-2007,
 35 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2008]: Sec. 19. (a) ~~Except as provided in subsections (b)~~
 37 ~~through (e), a sex or violent offender is required to register under this~~
 38 ~~chapter until the expiration of ten (10) years after the date The~~
 39 **registration period for a sex or violent offender required to register**
 40 **under this chapter begins on the date the sex offender:**

41 (1) is released from a penal facility (as defined in IC 35-41-1-21)
 42 or a secure juvenile detention facility of a state or another

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jurisdiction;

(2) is placed in a community transition program;

(3) is placed in a community corrections program;

(4) is placed on parole; or

(5) is placed on probation;

whichever occurs last. The department shall ensure that an offender who is no longer required to register as a sex or violent offender is notified that the obligation to register has expired.

(b) Except as provided in subsection (e), a Tier 1 sex offender shall register for fifteen (15) years.

(c) A Tier 2 sex offender shall register for twenty-five (25) years.

(d) Except as provided in subsection (f), a Tier 3 sex offender shall register for life.

(e) The fifteen (15) year registration period for a Tier 1 sex offender shall be reduced to ten (10) years if the following conditions are met during the first ten (10) years of the registration period:

(1) The sex offender is not convicted of a:

(A) felony; or

(B) sex offense.

(2) The sex offender successfully completes any period of probation, parole, community corrections, community transition, or other period of supervised release, if applicable.

(3) The sex offender successfully completes a sex offender treatment program approved by:

(A) a court;

(B) a community corrections program; or

(C) the department.

(f) The lifetime registration period for a Tier 3 sex offender who is classified as a Tier 3 sex offender based on the sex offender's adjudication as a delinquent child shall be reduced to the period during which the sex offender has already registered as a sex offender if the following conditions are met during any twenty-five (25) year period in which the sex offender is required to register as a Tier 3 sex offender:

(1) The sex offender is not convicted of a:

(A) felony; or

(B) sex offense.

(2) The sex offender successfully completes any period of probation, parole, community corrections, community transition, or other period of supervised release, if applicable.

(3) The sex offender successfully completes a sex offender

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treatment program approved by:

(A) a court;

(B) a community corrections program; or

(C) the department.

(b) A sex or violent offender who is a sexually violent predator is required to register for life.

(c) A sex or violent offender who is convicted of at least one (1) offense under section 5(a) of this chapter that the sex or violent offender committed:

(1) when the person was at least eighteen (18) years of age; and

(2) against a victim who was less than twelve (12) years of age at the time of the crime;

is required to register for life.

(d) A sex or violent offender who is convicted of at least one (1) offense under section 5(a) of this chapter in which the sex offender:

(1) proximately caused serious bodily injury or death to the victim;

(2) used force or the threat of force against the victim or a member of the victim's family; unless the offense is sexual battery as a Class D felony; or

(3) rendered the victim unconscious or otherwise incapable of giving voluntary consent;

is required to register for life.

(e) A sex or violent offender who is convicted of at least two (2) unrelated offenses under section 5(a) of this chapter is required to register for life.

(f) (g) A person who is required to register as a sex or violent offender in any jurisdiction shall register for the period required by the other jurisdiction or the period described in this section, whichever is longer.

SECTION 9. IC 35-41-1-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5.5. "Credit restricted felon" means a person who has been convicted of at least one (1) of the following offenses:

(1) Child molesting involving intercourse or deviate sexual conduct (IC 35-42-4-3(a)), if:

(A) the offense is committed by a person at least twenty-one (21) years of age; and

(B) the victim is less than twelve (12) years of age.

(2) Child molesting (IC 35-42-4-3) resulting in serious bodily injury or death.

(3) Murder (IC 35-42-1-1), if:

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- 1 (A) the person killed the victim while committing or
 2 attempting to commit child molesting (IC 35-42-4-3);
 3 (B) the victim was the victim of a sex crime under
 4 IC 35-42-4 for which the person was convicted; or
 5 (C) the victim of the murder was listed by the state or
 6 known by the person to be a witness against the person in
 7 a prosecution for a sex crime under IC 35-42-4 and the
 8 person committed the murder with the intent to prevent
 9 the person from testifying.

10 SECTION 10. IC 35-50-6-3 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) A person
 12 assigned to Class I earns one (1) day of credit time for each day ~~he~~ **the**
 13 **person** is imprisoned for a crime or confined awaiting trial or
 14 sentencing.

15 (b) A person assigned to Class II earns one (1) day of credit time for
 16 every two (2) days ~~he~~ **the person** is imprisoned for a crime or confined
 17 awaiting trial or sentencing.

18 (c) A person assigned to Class III earns no credit time.

19 (d) **A person assigned to Class IV earns one (1) day of credit for**
 20 **every six (6) days the person is imprisoned for a crime or confined**
 21 **awaiting trial or sentencing.**

22 SECTION 11. IC 35-50-6-4 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) A person **who is**
 24 **not a credit restricted felon and who is** imprisoned for a crime or
 25 imprisoned awaiting trial or sentencing is initially assigned to Class I.

26 (b) **A person who is a credit restricted felon and who is**
 27 **imprisoned for a crime or imprisoned awaiting trial or sentencing**
 28 **is initially assigned to Class IV. A credit restricted felon may not**
 29 **be assigned to Class I or Class II.**

30 ~~(b)~~ (c) A person **who is not assigned to Class IV** may be reassigned
 31 to Class II or Class III if ~~he~~ **the person** violates any of the following:

32 (1) A rule of the department of correction.

33 (2) A rule of the penal facility in which ~~he~~ **the person** is
 34 imprisoned.

35 (3) A rule or condition of a community transition program.

36 However, a violation of a condition of parole or probation may not be
 37 the basis for reassignment. Before a person may be reassigned to a
 38 lower credit time class, ~~he~~ **the person** must be granted a hearing to
 39 determine ~~his~~ **the person's** guilt or innocence and, if found guilty,
 40 whether reassignment is an appropriate disciplinary action for the
 41 violation. The person may waive ~~his~~ **the** right to the hearing.

42 (d) **A person who is assigned to Class IV may be reassigned to**

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Class III if the person violates any of the following:

(1) A rule of the department of correction.

(2) A rule of the penal facility in which the person is imprisoned.

(3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to Class III, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive the right to the hearing.

(c) (e) In connection with the hearing granted under subsection (b); (c) or (d), the person is entitled to:

(1) have not less than twenty-four (24) hours advance written notice of the date, time, and place of the hearing, and of the alleged misconduct and the rule the misconduct is alleged to have violated;

(2) have reasonable time to prepare for the hearing;

(3) have an impartial decisionmaker;

(4) appear and speak in his the person's own behalf;

(5) call witnesses and present evidence;

(6) confront and cross-examine each witness, unless the hearing authority finds that to do so would subject a witness to a substantial risk of harm;

(7) have the assistance of a lay advocate (the department may require that the advocate be an employee of, or a fellow prisoner in, the same facility or program);

(8) have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;

(9) have immunity if his the person's testimony or any evidence derived from his the person's testimony is used in any criminal proceedings; and

(10) have his the person's record expunged of any reference to the charge if he the person is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

(d) (f) A person may be reassigned from Class III to Class I, or Class II, or Class IV, or from Class II to Class I. A person's assignment to Class III or Class II shall be reviewed at least once every six (6) months to determine if he the person should be reassigned to a higher credit time class. A credit restricted felon may not be reassigned to Class

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I or Class II.

SECTION 12. IC 35-50-6-5, AS AMENDED BY P.L.173-2006, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) A person may, with respect to the same transaction, be deprived of any part of the credit time the person has earned for any of the following:

(1) A violation of one (1) or more rules of the department of correction.

(2) If the person is not committed to the department, a violation of one (1) or more rules of the penal facility in which the person is imprisoned.

(3) A violation of one (1) or more rules or conditions of a community transition program.

(4) If a court determines that a civil claim brought by the person in a state or an administrative court is frivolous, unreasonable, or groundless.

(5) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to register before being released from the department as required under IC 11-8-8-7.

(6) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to participate in a sex offender treatment program specifically offered to the sex offender by the department of correction while the person is serving a period of incarceration with the department of correction.

However, the violation of a condition of parole or probation may not be the basis for deprivation. Whenever a person is deprived of credit time, **he the person** may also be reassigned to Class II **(if the person is not a credit restricted felon)** or Class III.

(b) Before a person may be deprived of earned credit time, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether deprivation of earned credit time is an appropriate disciplinary action for the violation. In connection with the hearing, the person is entitled to the procedural safeguards listed in ~~section 4(c)~~ **section 4(e)** of this chapter. The person may waive the person's right to the hearing.

(c) Any part of the credit time of which a person is deprived under this section may be restored.

SECTION 13. [EFFECTIVE JULY 1, 2008] **IC 35-41-1-5.5, as added by this act, and IC 35-50-6-3, IC 35-50-6-4, and IC 35-50-6-5, all as amended by this act, apply only to persons convicted after June 30, 2008.**

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